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South Carolina Legislative Audit Council

Report to the General Assembly

May 1991

A Limited-Scope Review of the SC Department of Highways and Public Transportation Minority Goals Program

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(803)253-7639 FAX

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A Limited-Scope Review of the SC Department of Highways and Public Transportation Minority Goals Program was conducted by the following audit team.

Audit Manager
Cheryl A. Ridings
Assistant Director

Typography
Candice H. Pou
Maribeth Rollings Werts

Audit Team
Priscilla T. Anderson
Senior Auditor
Lyndon P. Chappell, CPA
Senior Auditor
Perry K. Simpson
Senior Auditor
Sparty B. Hammett III
Assistant Auditor

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Report to the General Assembly

**A Limited-Scope Review
of the SC Department
of Highways and Public
Transportation Minority
Goals Program**

LAC

May 1991

A Limited-Scope Review of the SCDHPT Minority Goals Program

As requested by members of the General Assembly, we have conducted a limited-scope review of the minority goals program of the South Carolina Department of Highways and Public Transportation (SCDHPT).

We found that both oversight and record-keeping of this program need improvement if program outcomes are to be met. In order to assist minority subcontractors, the federal government mandates that 10% of federal funds for construction projects be paid to minority subcontractors including women. In addition, state law requires that 10% of the state funds for construction projects be evenly distributed between disadvantaged and women business enterprises (DBEs and WBEs).

We reviewed operations of the DBE/WBE program from FY 86-87 through FY 89-90. According to agency records, approximately \$91 million was committed to DBE/WBE subcontractors during our review period.

In January 1987 and in January 1990 respectively, 139 and 147 DBE/WBE(s) were listed as certified to work as minority subcontractors on highway projects. In January 1991 (following a change in the focus of the state DBE/WBE program from subcontractor to contractor work which we did not review), 111 companies were listed as certified minority subcontractors.

Evidence was drawn from SCDHPT records. We also conducted a survey of subcontractors who had contracted with the SCDHPT through the DBE/WBE program during the period under review. We sampled awards to contractors which represented approximately 85% of the dollar value of contracts committed to DBE/WBE subcontractors during the period under review. We also verified payments to DBE/WBE subcontractors through surveying respondents and comparing their payment records to those of SCDHPT.

To what extent has the department monitored the DBE/WBE program to ensure that the program goals are met? (p. 5)

SCDHPT has not developed procedures to monitor the timeliness of payments from contractors to DBE/WBE subcontractors, which may affect their ability to stay in business. In addition, although \$91 million was committed to DBE/WBE subcontractors in our four-year test period, the amount actually paid to these subcontractors could not be determined. Thus, it is not possible to determine if the goal of expending 10% of construction funds is being met.

SCDHPT does not require written contracts between contractors and hauling subcontractors. Thus, haulers, who accounted for \$14.6 million (16%) of the committed funds during our test period, have less protection than other subcontractors.

In violation of federal guidelines, SCDHPT has allowed material costs to count toward the minority goal even though they were not purchased from minority sources.

Do certification procedures include adequate controls to ensure that qualified, bona fide DBE/WBE firms are certified to perform work on highway projects? (p. 17)

We found no evidence that SCDHPT was intentionally certifying clearly ineligible firms. However, contrary to state law, SCDHPT has awarded construction contracts with DBE/WBE goals to companies which did not use certified DBE/WBE contractors.

What factors exist that negatively impact the operation of the DBE/WBE program? (p. 21)

Lack of coordination between SCDHPT's Office of Compliance and Office of Construction hinders enforcement and monitoring of the program. Also, neither office has a system for following up on complaints which have included allegations of "fronts" and concerns about subcontractor payments and the costs of materials not purchased from DBE/WBE(s) being counted towards the minority goal.

Issue for further study. (p. 24)

One issue for further study was identified. The 1990 amendment to the South Carolina statutes changed the focus of the program from minority goals (subcontractor) to a set-aside (contractor) program. Contractors must have a certain level of resources available in order to be certified; many minority firms do not have resources which would allow them to participate at this level.

SCDHPT's response to our audit can be found on p. 37.

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Executive Summary

We examined the minority goals program and found that oversight of this program needs improvement if program outcomes are to be met. Disadvantaged Business Enterprise/Women Business Enterprise (DBE/WBE) subcontractors have not, in all circumstances, received adequate assistance as required. Additionally, poor coordination within the department hinders the effectiveness of program operations.

Our findings are summarized in response to issues which were concerns of the audit requestors and problems noted during the audit. Overall, however, we had problems with completeness and accuracy of records for this program and found that we could not rely on South Carolina Department of Highways and Public Transportation (SCDHPT) reports (see p. 13). Further, the Federal Highway Administration (FHWA) has never performed a compliance review of the South Carolina DBE/WBE program.

1 To what extent has the department monitored the DBE/WBE program to ensure that the program goals are met?

- The department has not developed procedures to monitor the timeliness of payments from contractors to DBE/WBE subcontractors, which may affect their ability to stay in business.
- Although \$91 million was *committed* to DBE/WBE subcontractors during our four-year test period, the amount actually *paid* to these subcontractors cannot be determined from SCDHPT records. Therefore, it is not possible to determine whether the goal of expending 10% of all project funds from federal or state highway projects with qualified DBE/WBE firms is being met.
- The department does not require written contracts between contractors and hauling subcontractors, while other trades involved in highway projects are required to have written agreements to apply the work towards DBE/WBE participation requirements. This situation has led to a lack of protection for haulers who received 16% of the committed awards during our test period.
- The department, in violation of federal guidelines, has allowed material costs from furnish and haul agreements to count towards the DBE/WBE goal, even though the materials were not purchased from minority sources, thus overstating the minority benefits.

We found that during our four-year test period, replacement of DBE/WBE subcontractors with other subcontractors has generally been handled according to state and federal guidelines.

- 2 Do department certification procedures include adequate controls to ensure that qualified, bona fide (DBE/WBE) firms are certified to perform work on highway projects?

While the eligibility of certain firms for the DBE/WBE program may be questionable, we found no evidence that the SCDHPT had intentionally certified clearly ineligible firms. However, we found that contrary to state law, SCDHPT awarded building construction contracts with DBE/WBE participation goals to companies which did not use certified DBE/WBE subcontractors.

- 3 What factors exist that negatively impact the operation of the DBE/WBE program?

- The lack of coordination between SCDHPT units which monitor the program may hinder enforcement and monitoring of the program. There is no formal means to exchange information and no clear definition of responsibilities exists between the Office of Compliance and the Office of Construction relative to the program.
- Neither the Office of Compliance or the Office of Construction have a system for following up on complaints. Some examples of complaints received are: allegations of "fronts"; concerns over subcontractor payments; and inclusion in the goal of costs for materials not purchased from DBE/WBE(s).

We found one issue for further study involving a 1990 amendment to the South Carolina statute. This amendment changed the focus of the state-funded DBE/WBE program from a minority goals (subcontractor) to a set-aside (contractor) program. The implementation of the state set-aside program may result in reduced DBE/WBE participation contrary to statutory intent (see p. 24).

Introduction

Background

In 1982, Section 105(f) of the Federal Surface Transportation Act required the state to develop a minority goals program to encourage the development of qualified disadvantaged business enterprises by mandating that 10% of federal award dollars be paid to minority subcontractors; in 1987, the program was expanded to include women. The state established a similar program using state funds in FY 86-87. State law requires that funding for highway construction projects be evenly distributed (5% and 5%) between disadvantaged and women business enterprises. We reviewed state and federal funds expended on highway projects relative to the DBE/WBE program.

The 1990 amendments to state law changed the thrust of the state-funded program from goals to set-aside (see p. 24). However, federal aid programs will continue to be goal oriented and therefore issues covered in this report remain relevant to future projects.

The SCDHPT operates the DBE/WBE program with coordination between offices within the department. Appendix B is the organization chart of the SCDHPT. Personnel within the Office of Compliance and the Office of Construction have primary responsibility for program implementation. Also, the special assistant within the executive director's office is responsible for coordinating construction projects contracted with DBE/WBE firms.

In January 1987 and in January 1990 respectively, 139 and 147 DBE/WBE(s) were listed as certified to work as minority subcontractors on highway projects. In January 1991 (following a change in the focus of the state DBE/WBE program from subcontractor to contractor work which we did not review), 111 companies were listed as certified minority subcontractors.

This report does not conclude on the overall effectiveness of the SCDHPT in accomplishing the mission mandated through this program. Rather we are providing information and evaluating performance in the limited areas described.

Audit Objectives

The Audit Council was requested by members of the General Assembly to conduct a limited-scope review of the minority goals program administered by the South Carolina Department of Highways and Public Transportation (SCDHPT). The review focused on three specific aspects of the program's operations expressed as the following questions:

To what extent has the department monitored the DBE/WBE program to ensure that the program goals are met?

Do department certification procedures include adequate controls to ensure that qualified, bona fide (DBE/WBE) firms are certified to perform work on highway projects?

What factors exist that negatively impact the operation of the DBE/WBE program?

In line with the objectives, which request information as well as evaluation, the report does not present traditional audit findings. Rather, the report answers the questions in narrative format.

Scope and Methodology

The review of the DBE/WBE program crossed department lines within SCDHPT and was limited to the scope imposed by the objectives. As a result, the review excluded operations such as personnel and administration, training contracts and the awarding of contracts in general because these areas were not material to the objectives.

The audit requestors approved our review of the DBE/WBE program from FY 86-87 through FY 89-90. We reviewed information and documents from SCDHPT and private subcontractors.

Evidence was drawn from SCDHPT records located in the Offices of Compliance and Construction and included financial records, subcontractor records, manuals, working papers and reports. The office of internal audit within the SCDHPT cooperated with our staff and provided working papers for our review from their 1989 audit and 1990 follow-up review of the Office of Compliance and its programs. We also conducted a survey of subcontractors who had contracted with the SCDHPT through the DBE/WBE program during the period under review. We interviewed SCDHPT staff, highway officials in other states and personnel of the Federal Highway Administration.

We chose a sample of awards to contractors which represented approximately 85% of the dollar value of contracts committed to DBE/WBE subcontractors during the period under review. We also verified payments to DBE/WBE subcontractors through surveying respondents and comparing their payment records to those of SCDHPT. We manually extracted data from the files, because information concerning goals and set-aside is not computerized (see p. 13).

A glossary of technical terms used in this report is presented as Appendix B on page 30.

The audit was conducted in accordance with generally accepted government auditing standards.

Introduction

To what extent has the department monitored the DBE/WBE program to ensure that program goals are met?

We reviewed the SCDHPT's monitoring of the DBE/WBE program and determined that procedures used by the agency are inadequate to ensure compliance with federal and state minority participation requirements. The department does not monitor the timeliness of DBE/WBE subcontractor payments from contractors. The amounts expended with subcontractors as well as other information relevant to the DBE/WBE program cannot be determined from department records (see p. 13). Also, it appears that the department has not complied with federal requirements by not requiring written contracts for hauling (trucking) firms (see p. 10) and counting the cost of materials bought from non-minority firms towards the minority participation requirements (see p. 11). To ensure compliance with the DBE/WBE program requirements, the department must implement measures to effectively monitor the program.

Subcontractor Payments

The SCDHPT has not developed procedures to monitor the timeliness of payments from contractors to DBE/WBE subcontractors and material suppliers. Approximately \$91 million was *committed* to DBE/WBE subcontractors from FY 86-87 to FY 89-90. The amount paid to these subcontractors could not be determined from SCDHPT records (see p. 13).

Contractors frequently use subcontractors to perform part(s) of highway projects. The department pays the contractor for all work performed on a project. The contractor in turn is responsible for paying subcontractors from payments received from the department.

The Office of Compliance receives quarterly reports from contractors showing the amounts paid to DBE and WBE subcontractors. However, the department does not use these reports to verify that contractors have paid their subcontractors in a timely manner. Compliance staff told us that the quarterly reports are not compared to payments made by the department to contractors. According to highway department officials, the relationship between contractors and subcontractors is not an area in which the department should become involved.

The South Carolina Legislative Black Caucus held a public hearing in October 1988 to discuss problems related to the DBE/WBE program. During this hearing, officers of several firms testified that slow payments from contractors placed severe strain on their ability to remain in business. For example, one DBE subcontractor testified that slow payments from

contractors can cause problems in securing credit, hiring employees and paying taxes.

The preamble of the state legislation establishing the DBE/WBE program (§12-27-1320 of the South Carolina Code of Laws) states that the program is to "remedy historic patterns of discrimination against minorities and women in the awarding of state contracts." As such, the SCDHPT has a responsibility to ensure fair treatment of DBE/WBE subcontractors by contractors. Untimely payments could result in the financial collapse of DBE/WBE firms.

In April 1990, §29-6-30 (Payments to Contractors, Subcontractors, and Suppliers) was amended to require contractors to pay subcontractors who have performed in accordance with the provision of their contracts within seven days of receiving payment. Further, §29-6-50 specifies that interest on late payments is to be assessed when a subcontractor has met contract specifications. As of April 1991, the SCDHPT had not implemented procedures to ensure compliance with these requirements.

The department has stated that it has no responsibility to enforce §29-6-30 and that DBE/WBE subcontractors should take recourse through the courts. This may be too costly for many DBE/WBE firms.

Recommendation

- 1 The department should ensure that contractors pay their subcontractors and material suppliers in a timely manner as specified in §29-6-30 of the South Carolina Code of Laws.
-

Replacement and Use

The department must give prior approval to the replacement of a DBE/WBE subcontractor with another subcontractor. SCDHPT's Office of Construction can impose sanctions against contractors who replace DBE/WBE firms before obtaining department approval. Sanctions may include one or more of the following actions: forfeiture of the bond or a part; disqualification from bidding; withholding of monthly progress payments; default and termination of the contract; and assessment of liquidated damages.

Before replacing a DBE/WBE subcontractor, a contractor is to provide the department with reasons for the replacement and information on whether the DBE/WBE firm objects to the replacement. Further, the contractor is to inform the DBE/WBE firm of the proposed replacement.

Contractors are required by federal and state policy to make documented "good faith efforts" to replace a DBE/WBE firm with another DBE/WBE firm. "Good faith efforts" include but are not limited to the contractor's submittal of the names of certified DBE/WBE companies contacted to replace the firm. If a contractor cannot replace one minority firm with another, a non-minority firm may be used but payment to the subcontractor cannot be counted towards the minority goal. In cases where the DBE/WBE firm objects to a replacement, the department decides whether to allow replacement based on the facts in the case.

Replacement of DBE/WBE(s)

We found that where DBE/WBE(s) have been replaced on projects, replacement was generally handled according to state and federal requirements. An SCDHPT official estimated that replacement of DBE/WBE(s) originally committed to perform work occurs in approximately 3% of the projects.

We reviewed 60 projects representing the largest DBE/WBE commitments between FY 86-87 and FY 89-90 and found only one case where a DBE may have been improperly replaced. This section provides detail on that case. For our sample of projects, we compared amounts shown on quarterly reports from contractors to the amounts committed to the DBE/WBE(s) as shown on original contract award documents. We identified 47 cases where it appeared from SCDHPT records that a DBE/WBE may have been replaced. We reviewed project documentation maintained by the Office of Construction for each of these cases.

- In 26 (55%) of the 47 cases, we could not verify that a replacement had actually occurred. SCDHPT officials indicated that these DBE/WBE(s) were not listed on the quarterly reports because their stages of the work had not yet begun. According to the department's instructions for completing quarterly reports, the reports should have listed these DBE/WBE(s) and indicated when each was scheduled to begin work, and the total to be paid to the DBE/WBE.
- In 10 (21%) of the 47 cases, we were able to determine that no replacement had occurred. (The quarterly reports again were improperly

prepared.) Project documentation indicated that the DBE/WBE(s) had in fact performed their portions of the projects.

- Only 11 (23%) of the 47 represented actual replacements. Nine of the eleven replacements were done with the department's prior written authorization and there was documentation in the project files to support the contractors' "good faith efforts" to use the original DBE/WBE(s).

Of the remaining two replacements, one involved a DBE trucking firm which was originally named to perform \$300,000 of hauling. Due to a lawsuit between the DBE and the contractor involving this project, the department has not approved a replacement for the DBE.

The remaining replacement, which may have been an improper replacement, occurred on a major bridge project. A WBE was scheduled to build the temporary access roads for approximately \$690,000. However, the contractor used a non-minority firm to do the work. The department approved this replacement after the fact, and in spite of the lack of "good faith efforts" to use another minority.

SCDHPT officials stated that the WBE agreed to the replacement in exchange for other work on the project. File correspondence indicates that the WBE became aware of the replacement only after the originally scheduled work had been completed by the non-minority firm.

No agreement was ever reached between the contractor and the WBE firm for the new portion of work. Documents in the project files indicate that the contractor may have been attempting to use a non-minority firm to perform the work and pay the WBE a token amount for performing no work. The proposed arrangement was structured so that the WBE firm would appear to receive \$2.2 million, when in fact the firm would have kept at most \$30,000. Had the WBE agreed to participate in this arrangement, the firm could have been decertified as a WBE.

The department reviewed the proposed arrangement and determined that the WBE would be receiving payment while not performing a commercially useful function, which is prohibited by federal regulations. In January 1988, the department notified the contractor that the proposed arrangement could not be counted towards the project's WBE goals for this reason.

This WBE lost the opportunity to work on this project because the contractor replaced the firm. The department has taken no action against the contractor for the replacement or the attempted pass through scheme. The department

stated that it investigates all situations when firms which are not approved to perform work are performing. However, the department did not investigate these incidents, even though it was aware that the WBE was allegedly replaced without her knowledge.

Use of DBE/WBE(s)

As a result of reviewing the sample of 60 projects for possible replacement of DBE/WBE(s) (see p. 6), we found one case in which a questionable DBE was used. One DBE used by the contractor on the same bridge project had been decertified in Georgia (the firm's home state) for being a front. The Office of Compliance had recertified the DBE without contacting Georgia about the DBE's status.

An SCDHPT official stated that at the time of the DBE's recertification, the office just reviewed documentation that was provided by the DBE; now they contact the home state of the DBE/WBE firm. The official also stated that the DBE would not have been recertified if they had the information that the DBE was decertified in Georgia. The office received information that the DBE was decertified after bids were received for the project. Georgia had completed an audit and decertified the DBE five months before they were recertified in South Carolina.

Although the SCDHPT found out that the DBE had been decertified in Georgia, and that the U.S. Department of Transportation was conducting an investigation as a result of the DBE's appeal, the SCDHPT still authorized the contractor to use the DBE. The authorization was for over \$10 million, which was the largest DBE commitment in our sample.

The director of compliance wrote a letter to the director of construction suggesting the establishment of a contingency plan in the event the DBE was decertified in South Carolina. However, a contingency plan was not established, and the DBE was subsequently decertified on a nationwide basis.

The SCDHPT waived the contractor from replacing the DBE due to the higher cost of the bids which were submitted. This commitment represented a significant amount of work which could have been performed by a legitimate DBE/WBE firm. However, a federal highway official stated that the SCDHPT had to allow the contractor to use the DBE because their decertification was not official due to the DBE's federal appeal. In addition, the official stated that there is no requirement that other states be contacted prior to recertification.

Recommendations

- 2 The department should investigate all situations where there is evidence that a contractor has not received department authorization to replace a DBE/WBE subcontractor.
- 3 The department should assess penalties on contractors whenever its investigation indicates that the replacement of a DBE/WBE subcontractor was not authorized by the department. Likewise, if the investigation indicates that the DBE/WBE subcontractor is at fault, punitive action should be taken against the subcontractor.
- 4 The department should routinely verify the status of firms certified in other states upon application for certification as well as during the recertification process in South Carolina (see p. 18).

Hauling Agreements

The SCDHPT has implemented a policy concerning hauling (trucking) agreements which appears to be contrary to requirements of the Federal Highway Administration (FHWA). The SCDHPT has not required written agreements between contractors and DBE/WBE hauling subcontractors when credit is counted towards the federal goal.

The FHWA's *DBE Program Administration Participant's Manual* requires trucking subcontracts to be in writing as a condition of counting participation towards the federal project goal. The department's DBE/WBE special provisions for federal aid contracts, which the department developed and the FHWA approved, differentiate between hauling and other subcontractors. All DBE/WBE subcontracts except hauling are to be in writing as a condition for credit towards the federal goal.

The department's official bidding instructions state that if a contractor lists a DBE/WBE subcontractor in his bid, the contractor must use that subcontractor, subject to the replacement requirements contained in the special provisions. This provides the DBE/WBE with some protection, but it does not specify the rights and responsibilities of both parties as would a written agreement.

An FHWA official estimated that six complaints were received in the last four years; half of these were from haulers. The haulers' complaints were generally related to contractual disputes.

According to a department official, the rationale for not requiring written contracts between contractors and hauling subcontractors is that the South Carolina Public Service Commission (PSC) [which regulates the trucking profession] does not allow haulers to enter into written subcontract agreements. However, according to a PSC official, the commission does not prohibit such agreements.

Of approximately \$91 million committed to DBE/WBE contracts awarded from FY 86-87 to FY 89-90, \$14.6 million (16%) was for hauling services. We could not determine how many of those contracts were unwritten, and would therefore, not be authorized to count towards the program goals.

The lack of a written contract does not provide protection for DBE/WBE hauling subcontractors. To maximize efforts to meet state and federal DBE/WBE participation requirements, the department should require *all subcontracts* to be in writing as a condition for applying them towards DBE/WBE participation.

Recommendations

- 5 The department should require written agreements between contractors and all DBE/WBE subcontractors including hauling firms.
- 6 The General Assembly may wish to amend §12-27-1320 of the South Carolina Code of Laws to require written agreements between contractors and subcontractors as a condition of counting applicable highway construction work towards the state DBE/WBE participation requirements.

Material Costs

SCDHPT allows the costs of materials (on furnish and haul agreements) which are purchased from non-DBE/WBE firms to be credited towards federal DBE/WBE project goals. This appears to contradict the requirements of the federal regulations which govern the DBE/WBE program. (State law does not address DBE/WBE participation relative to material costs for state-funded project goals.)

According to 49 Code of Federal Regulations (CFR), section 23.47(F)(2), fees paid to DBE/WBE firms for delivery of materials required on a job site, *but*

not the cost of the materials, may be counted towards the federal project goals.

Under the federal and state special provisions, which the department developed and incorporates in its DBE/WBE construction contracts, the cost of some materials purchased from non-DBE/WBE suppliers may be credited towards the DBE/WBE project goals. The special provisions stipulate that 20% of the material costs and 100% of hauling costs may be counted towards the goal when a DBE/WBE furnishes and hauls materials and performs no other work on the highway project. The provisions do not require the DBE/WBE subcontractor to purchase materials from a DBE/WBE supplier.

Material costs may vary greatly depending upon the distance the material has to be transported and the type of material hauled. Therefore, the cost of materials may be less than or greater than the cost of hauling. We could not quantify the amount of material costs counted towards federal goal participation since DBE/WBE payment reports maintained by the department do not separate the costs for materials and delivery.

When the cost of materials purchased from non-minority sources is counted towards DBE/WBE participation, the intent of the program, to promote minority businesses, is not achieved. Further, such a practice inflates the goal amount, which may result in inaccurate reporting of DBE/WBE participation levels.

Recommendations

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- 7 The department should amend the special provisions relative to material costs to conform with 49CFR, section 23.47 (F)(2).
 - 8 The cost of materials purchased from non-DBE/WBE suppliers for "furnish and haul" arrangements should not be counted towards the federal and state DBE/WBE participation.
 - 9 The department should modify the DBE/WBE quarterly report form to separately show the cost of materials and delivery charges.
 - 10 The General Assembly may wish to consider amending §12-27-1320 of the South Carolina Code of Laws to disallow materials purchased from non-DBE/WBE suppliers to count as state DBE/WBE participation on "furnish and haul" arrangements.

Record-Keeping

The SCDHPT has not maintained complete and accurate records of DBE/WBE participation on all construction projects. Without accurate records, the department cannot effectively administer and monitor the DBE/WBE program.

The department's Office of Compliance is responsible for monitoring payments to ensure that the DBE/WBE participation goals are met. Contractors are required to submit quarterly reports which show all payments to DBE/WBE subcontractors to the Office of Compliance. DBE/WBE subcontractors sign the reports to verify payments.

We obtained a sample of DBE/WBE quarterly reports from the department for projects awarded from July 1, 1986 to June 30, 1990. We found instances of missing reports and unsubstantiated payments to DBE/WBE subcontractors.

For example:

- A project awarded in February 1989 was over 50% complete as of January 1990. However, the department had not received any quarterly reports on this project as of March 1991.
- The 1988 and 1989 quarterly reports for a project awarded in March 1987 were not signed by the DBE subcontractors on the project but by the contractor. The contractor had signed the reports for three different DBE subcontractors. Notes on the reports indicate that the contractor had "signed with verbal permission."
- The department did not keep any record of payments to DBE/WBE subcontractors on 100% of state-funded building construction projects for the period reviewed.

Quarterly DBE/WBE reports are recorded in a contract log book which lists information to include the amount paid to each DBE/WBE. According to a department employee, they do not routinely prepare a report to show the status of DBE/WBE participation on all active projects. Further, the employee stated that follow-up on incomplete and inaccurate reports is limited. Finally, the log book is not reviewed periodically to ensure that all quarterly reports have been received.

We requested the Office of Compliance to provide reports showing the amount paid to DBE and WBE firms on all highway and bridge construction projects awarded during the period reviewed. (Building construction

information was not available.) We compared the payment amounts reported by the department to the amount which had been committed based on original contract documents.

SCDHPT records indicate that 254 individual DBE/WBE firms were listed on bid documents for goals projects which had closed out. Of this number, 51 (20%) were reported as having received no payments. We reviewed a sample of these cases to determine the reason for nonpayment. In 4 of the 5 cases reviewed, we found that the DBE/WBE subcontractors had received total payment of approximately \$446,000. (In one case, the DBE firm had been replaced.) The amounts reported by the Office of Compliance were incorrect. According to a compliance employee, these reports were prepared from the contract log.

The department's internal auditor issued a report on the Office of Compliance in June 1989. The audit was critical of the DBE/WBE record-keeping system. The audit found that the contract log used to record payments to DBE/WBE subcontractors was not accurate; also, there were no procedures to follow-up on missing quarterly DBE/WBE reports. Based on our observations, this condition still exists.

According to 49 CFR, section 23.49(a), which governs the federal DBE/WBE program, the department shall develop a record-keeping system which will identify and assess contractor progress in achieving contract goals. This should include procedures to ensure the accuracy and completeness of program records.

Complete records are needed to determine compliance with required participation levels for the federal and state DBE/WBE program. Incomplete and inaccurate records can cause department management to reach incorrect conclusions about the program. The condition of the department's records also impairs our ability to rely upon the information provided by the department.

Recommendations

- 11 The department should develop an internal reporting system to enable management to review the status of DBE/WBE goal participation.
- 12 The department should implement procedures to ensure that quarterly DBE/WBE reports are received in a timely manner.
- 13 The department should implement procedures to follow-up on quarterly DBE/WBE reports which are incomplete and/or inaccurate.

Issue 1

To what extent has the department monitored the DBE/WBE program?

Do department certification procedures include adequate controls to ensure that qualified, bona fide DBE/WBE firms are certified to perform work on highway projects?

According to 49 CFR, section 23, the department is to ensure that only bona fide socially and economically disadvantaged firms participate in the minority program. State law also requires certification for participation. We conducted a judgmental sample of certified DBE/WBE firms and found that the department followed standard procedures in certifying the cases reviewed. Also, the department investigated cases in which there was a question of ineligibility. However, in our verification of minority goals information, we identified cases in which the department allowed uncertified firms to participate as DBE/WBE firms on state-funded projects (see p. 19).

Certification Process

While the eligibility of certain firms for the DBE/WBE program may be questionable, we found no evidence that the SCDHPT had intentionally certified clearly ineligible firms.

According to the *Disadvantaged Business Enterprise Participant's Manual* published by the Federal Highway Administration, the United States Department of Transportation (USDOT) states:

The integrity and credibility of the Disadvantaged Business Enterprise Program depends upon the establishment of systematic procedures to ensure that *only bona fide small business firms owned and controlled by socially and economically disadvantaged individuals* participate in the DOT's DBE program. [Emphasis Added]

As of February 1991, there were 154 certified DBE/WBE(s) in South Carolina. In order to be certified, a firm must meet the following standards:

- It must be owned by a bona fide minority group member (including women).
- It must be an independent business with ownership and control in the hands of a minority.
- The management, policies and day-to-day operations of the firms must be directed by a minority.
- Non-minority owners may not be disproportionately responsible for the operation of the firm.

- All securities of a corporation must be held directly by minorities.
- The minority owner must acquire his/her interest through real and substantial contributions of capital or expertise.

According to 49 CFR, section 23.53, recertification of DBE/WBE firms is required each year.

During our review, we examined the certification of ten firms that had been identified as possible "fronts." In cases where questions were raised about the firm's status, the SCDHPT did conduct an investigation. In one case, over a nine-year period, three different investigations were conducted. In each case where the firm's status was questioned, the firm was eventually certified or recertified.

We also found that 54 (35%) of the 154 DBE/WBE(s) certified as of February 1991 were located in another state. We contacted state highway officials in North Carolina and Georgia (the states with the highest number of firms certified in South Carolina), to determine if the firms were certified in their home states. Thirty (81%) of the 37 firms located in Georgia or North Carolina were also certified in their home state.

We identified two DBEs that had been decertified in their home state but were still certified in South Carolina. According to officials in these states, these firms had exceeded the size standards which qualified them as a small minority business. In one case, the SCDHPT was aware that the firm had exceeded the size standards but, through an oversight, had not removed the firm from the DBE directory. In the second case, the Office of Compliance had no information indicating the firm had exceeded the size standards.

We also found that 16 (16%) of the DBE/WBE(s) located in South Carolina were certified in either North Carolina or Georgia, or both. Thus, 70 (46%) of the 154 certified DBE/WBE(s) are either located in another state or are South Carolina firms certified in another state.

SCDHPT's certification procedures have been annually approved by the Federal Highway Administration (FHWA) from 1988 through 1991 in accordance with the requirements set forth under federal regulations. The USDOT can perform a program review of a state's certification process. A program review has not been done in South Carolina. However, according to a federal official, no review is needed since an official of the FHWA attends all Disadvantaged Business Enterprise Advisory Committee (DBEAC)

meetings where recommendations are made concerning whether or not to certify a firm as a DBE/WBE.

Between October 1, 1989 and September 30, 1990, the DBEAC denied certification to seven firms which subsequently appealed this denial to the USDOT. The USDOT upheld all seven denials. In addition, 49 CFR, section 23.69(1) allows any third party to challenge the certification of a DBE/WBE if the party believes the certification to be improper. According to department officials, no records have been kept on the number of third-party challenges brought. However, no firm was decertified between October 1, 1989 and September 30, 1990.

In addition, according to an official with the Governor's Office of Small and Minority Business Assistance, the office automatically accepts firms certified as DBE/WBE(s) by SCDHPT into its minority business program. SCDHPT's office of internal audit has performed an audit of the Office of Compliance. The audit does not contain any findings about firms being improperly certified.

Recommendation

-
- 14 The Office of Compliance should consider developing a reciprocity agreement with other states to ensure that information on the certification of firms in other states is transmitted to the Office of Compliance in a timely manner.
-

Uncertified Firms

Contrary to state law, the department awarded building construction contracts with DBE/WBE participation goals to companies which did not use certified DBE/WBE subcontractors. A total of 17 state-funded building construction contracts, worth \$15.2 million, and DBE/WBE commitments of \$1.6 million were awarded during FY 86-87 through FY 89-90. Of these 17 contracts, 6 included firms which were subcontracted as DBE/WBE(s) even though the firms were not certified by the department's Office of Compliance. The total value of the DBE subcontracts awarded to these non-certified companies was \$275,792 (17%) of the DBE/WBE commitment for the test period.

Section 12-27-1320(b) of the South Carolina Code of Laws specifies that the department must certify firms eligible to participate in the minority program.

Only certified firms may be used to meet the DBE/WBE participation goals.

We obtained the names of all DBE/WBE firms used on building construction contracts awarded during this period. When we requested verification of these firms from the Office of Compliance, seven of the firms were unknown to them. According to the Office of Compliance, there is no record of these firms ever being certified as DBE/WBE(s). Furthermore, according to the building engineer's office, there is no indication in the project files that the certification of the named DBE/WBE companies was verified prior to awarding these contracts.

Because the department did not verify the eligibility of these companies, certified DBE/WBE(s) lost the opportunity to perform on these projects. The department did not comply with the law. Further, the DBE/WBE goals on these projects may not have been met. We could not determine the amounts actually paid to certified DBE/WBE(s) on building construction projects since the department does not maintain records of these projects (see p. 13).

Recommendation

-
- 15 The department should comply with §12-27-1320(b) of the South Carolina Code of Laws which provides that only certified firms are to be accepted for DBE/WBE participation on designated set-aside or goals building construction projects.

What factors exist that negatively impact the operation of the DBE/WBE program?

Evidence indicates that the SCDHPT has not effectively coordinated operation of the DBE/WBE program through various units of the department. Coordination is critical to the success of the program since the certification of DBE/WBE firms and the work performed by the firms are monitored by different departmental units. The lack of coordination between units may weaken enforcement of the program and limit the department's ability to make determinations concerning contractor compliance.

Program Coordination

There is a lack of coordination between the SCDHPT units which monitor the DBE/WBE program: the Office of Compliance and the Office of Construction. As a result, enforcement and monitoring of the program may be hindered.

The Office of Construction monitors the work of DBE/WBE and other contractors on highway projects. The Office of Compliance monitors compliance with federal and state DBE/WBE participation requirements; also, this office is responsible for certifying DBE/WBE applicants who meet eligibility standards (see p. 17). Due to the direct relationship between the work performed by DBE/WBE contractors to compliance with the DBE/WBE participation requirements, it is imperative that the functions of the Office of Compliance and the Office of Construction are adequately coordinated.

A compliance official stated that decisions as to which office will handle situations requiring follow-up are made on a case-by-case basis. Further, this official stated that the Office of Compliance is not informed of construction meetings in which DBE/WBE project goals are set.

Complaints involving the DBE/WBE program are handled by both offices. However, neither of the offices have established formal procedures to handle complaints (see p. 23).

A June 1989 internal audit of the Office of Compliance identified communication problems between the Office of Compliance and the Office of Construction. The audit cites a case in which payments to a decertified WBE firm were listed on DBE/WBE payment verification records. The audit concluded that this problem was due to the lack of communication between the Office of Construction and the Office of Compliance.

The directors of compliance and construction stated that the responsibilities of the two offices relative to the DBE/WBE program have not been clearly defined. (This does not include procedures for certification.) Also, the department did not promulgate regulations for the state-funded DBE/WBE goals program implemented from FY 86-87 to FY 89-90 as required by §1-23-10 to §1-23-160 of the South Carolina Code of Laws [Administrative Procedures Act (APA)]. The APA generally requires that an agency's policies which have "general public applicability" be promulgated as regulations. Finally, the department has not promulgated regulations for the state DBE/WBE set-aside program implemented as of July 1990 within 120 days of the passage of this legislation as required by §12-27-1320(O). As of April 1991, the department was in the process of promulgating regulations.

In April 1987, the SCDHPT developed a plan to improve minority affairs to include the DBE/WBE program. The plan included the appointment of a special assistant within the executive director's office to *coordinate* construction projects contracted with DBE/WBE(s); also, the role and authority of the Office of Compliance was to be reviewed. The special assistant position was created in July 1987 and filled in January 1988. We reviewed the position description for the special assistant and found that the duties of the position reiterate steps included in the department's plan to improve the DBE/WBE program. Nevertheless, problems with coordination of the program still exist.

Annual DBE program updates from at least 1988 to 1991 (which were developed by the department and approved by the Federal Highway Administration) specify that the DBE liaison officer (in this case, the director of the Office of Compliance) is to ensure coordination among appropriate department units in carrying out the DBE/WBE program. Further, the director is responsible for developing day-to-day procedures and coordinating utilization of DBEs in all aspects of contracting to include construction.

By failing to provide a formal means to coordinate the exchange of information and defining the responsibilities of the two units monitoring the DBE/WBE program, the department's ability to identify and resolve problems of the DBE/WBE program in a timely manner may be limited. The coordination of the Office of Compliance and the Office of Construction is needed to ensure success of the DBE/WBE program.

Recommendations

- 16 The SCDHPT should develop written policies and procedures which specify the responsibilities of the Office of Compliance and the Office of Construction concerning the DBE/WBE program.
 - 17 The SCDHPT should promulgate regulations for the state DBE/WBE program as required by §12-27-1320 of the South Carolina Code of Laws and the Administrative Procedures Act.
-

Complaint Handling

The Office of Compliance and the Office of Construction, the two units of the SCDHPT responsible for investigating complaints concerning the DBE/WBE program, do not have an investigative arm or a formal system to handle complaints. Also, neither of these offices maintains complaint logs, files or standard complaint forms. Complaints have been handled informally with no systematic means to determine the disposition of complaints.

According to the directors of both offices, complaints involving work on highway projects are handled by the Office of Construction while complaints involving compliance issues such as the certification of bona fide DBE/WBE firms are handled by the Office of Compliance. Both directors stated that complaints as necessary are forwarded to the other unit.

The Director of Compliance estimated that approximately 25 complaints have been received yearly. Agency officials stated that they have received complaints concerning subcontractor payments (see p. 5), material costs (see p. 11), alleged "fronts," and work being performed by a firm other than the DBE/WBE firm awarded the project.

An analysis of complaints involving the DBE/WBE program could not be conducted since adequate records to create an audit trail are not maintained. However, in reviewing highway project files, we noted complaints which had been filed by DBE/WBE contractors with the department. In one instance, a WBE firm filed a complaint in July 1988 with the Office of Construction. The complaint concerned unauthorized replacement of the WBE contractor with another firm (see p. 6). There was no evidence in the file that this complaint was investigated by the Office of Construction.

According to the 1991 DBE program update, the director of the Office of Compliance is to supervise the investigation of alleged abuses occurring on

project sites during construction. Assignment of staff to investigate complaints and a system to track, analyze and resolve complaints would help to address areas of contractor concern. Further, a formal system to handle complaints would provide information needed to improve operation of the DBE/WBE program.

Recommendations

- 18 The Office of Compliance should develop formal procedures to follow when complaints are filed. These procedures should include the maintenance of a standard complaint form, log, and complaint files. These records should include; complainant, nature of complaint, date of complaint, action taken, and follow-up.
- 19 Staff of the Office of Compliance should be assigned to investigate complaints concerning the DBE/WBE program. In investigating complaints, compliance staff should, as necessary, confer with other appropriate department staff.

Issue for Further Study

The generally accepted government auditing standards of the U.S. General Accounting Office provide that issues identified during audit work which do not directly relate to the audit objectives should be disclosed as issues for further study.

Set-Aside Program

In the course of our review, we noted an issue for further study involving the focus of the state-funded DBE/WBE program. The emphasis of this program changed from the achievement of DBE/WBE participation requirements through work performed by DBE/WBE *subcontractors* to achievement through work performed by DBE/WBE *contractors*.

Prior to July 1990, §12-27-1320 of the South Carolina Code of Laws provided that 10% of yearly state construction funds be spent with DBE/WBE firms through participation goals on individual contracts or through the use of set-asides. DBE/WBE firms acted as subcontractors, usually to majority-owned contractors. As of July 1990, §12-27-1320 was amended, specifying

that 10% of state construction dollars be spent with DBE/WBE firms primarily through direct contracts (set-aside). The DBE/WBE firm is the contractor.

As of April 1991, only 23 DBE/WBE firms had been certified to bid as contractors on set-aside projects; 135 DBE/WBE firms had been certified to bid as subcontractors. Evidence indicates that only a few DBE/WBE companies will benefit from the set-aside program. According to department records, only 13 DBE/WBE firms acted as contractors on the 67 set-aside projects awarded between FY 86-87 and FY 89-90 (see Appendix D). Additionally, 5 of the 13 firms were awarded a total of 47 (70%) of the set-aside contracts. The 47 contracts amounted to approximately \$8.9 million, (76%) of the \$11.7 million awarded for all set-aside projects.

Although not central to the audit objectives, implementation of the state set-aside program may have an effect on the department's statutory mandate to encourage participation of minorities in state contracts.

Recommendation

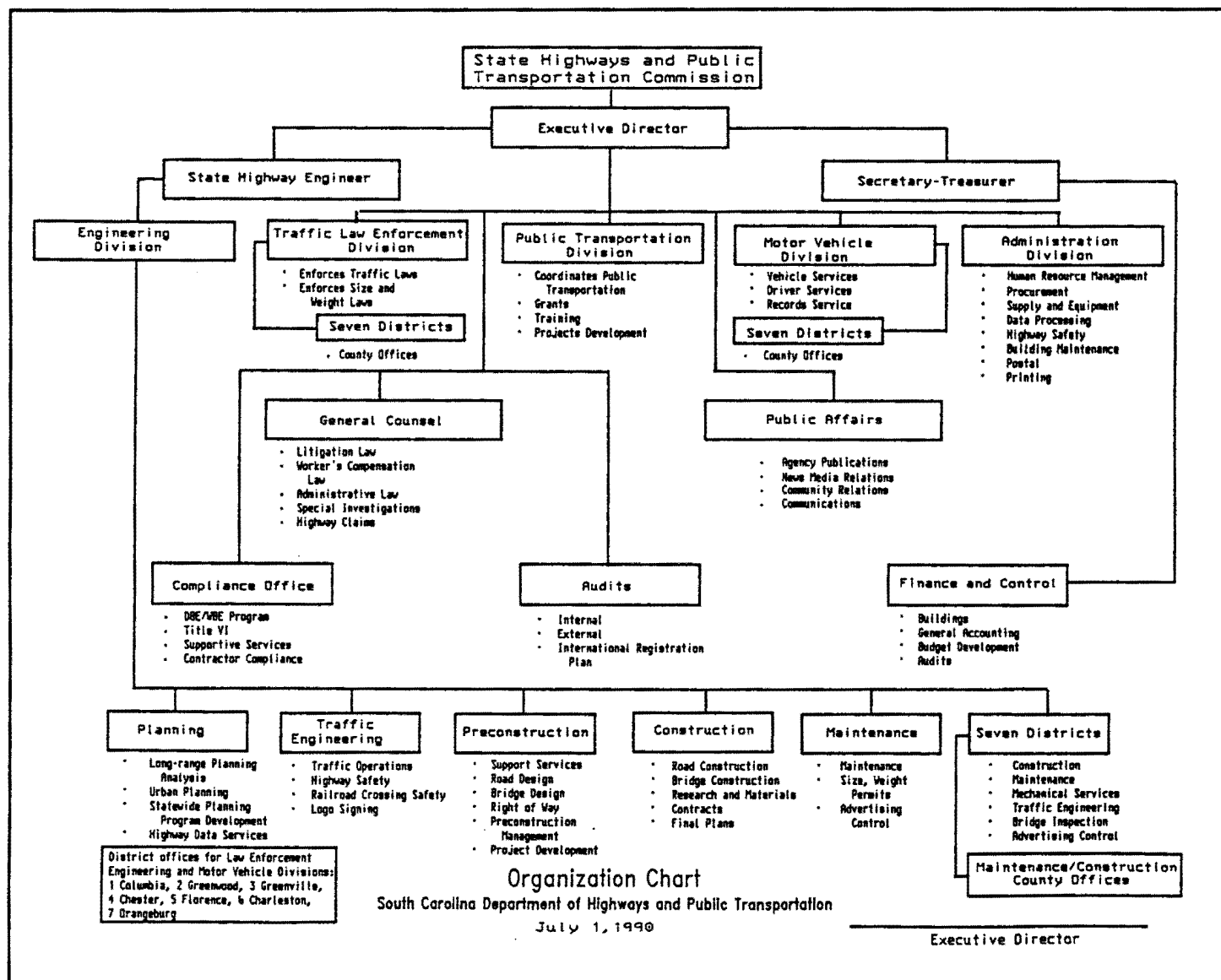
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- 20 The General Assembly may wish to review the potential effects of changing the emphasis of the minority program from participation goals on individual programs to direct contracts (set-aside).

Issue 3

What factors exist that negatively impact the operation of the DBE/WBE program?

Appendices

SC Department of Highways and Public Transportation Organization Chart



Glossary

Commercially Useful Function - Occurs when a DBE executes and is compensated for a distinct element of work.

Disadvantaged Business Enterprise (DBE) - A small business concern which is at least 51% owned by one or more economically and socially disadvantaged individuals and whose management and daily business operations are controlled by these individuals.

Disadvantaged Business Enterprise Advisory Committee (DBEAC) - A committee composed of representatives of the SCDHPT, the Governor's Office, representatives from minority or women business associations, and the public. The DBEAC reviews a firm's application for DBE certification and makes a recommendation to the SCDHPT executive director.

"Front" - A business that claims to be owned and controlled by minorities, women or other disadvantaged individuals but in reality is not.

Goals Project - A level of DBE/WBE participation.

"Good Faith Effort" - A contractor can be exempted from having to meet its DBE/WBE goal if it can demonstrate that, for reasons beyond its control, it was unable to do so.

Contractor - The firm directly responsible for undertaking the execution of a contract.

Replacement - A contractor may substitute another firm for the DBE/WBE subcontractor originally scheduled to perform work when the DBE/WBE is unwilling or unable to do the work.

Set-Aside Project - A technique which limits consideration of bids or proposals to those submitted by minorities.

Subcontractor - Any individual, firm or corporation to whom the contractor sublets any part of the contract.

Women Business Enterprise (WBE) - A small business concern which is at least 51% owned by one or more women and whose management and daily business operations are controlled by these individuals.

Summary of DBE/WBE Goal Contracts Awarded FY 86-87 Through FY 89-90

DBE/WBE SUBCONTRACTOR	NUMBER OF PROJECTS	AMOUNT COMMITTED
AMERICAN HIGHWAYS, INC.	1	\$1,188,037
AMPAC CONSTRUCTION COMPANY, INC.	17	\$802,872
ANATEK, INC.	1	\$180,355
ANDERSON BRICK, BLOCK, AND REMODELING	3	\$51,072
ARTHUR WILSON	1	\$21,319
A.V.A. CONSTRUCTION CORPORATION	3	\$719,640
BAILEY-BRAZELL CONSTRUCTION COMPANY, INC.	1	\$482,637
BALLARD CONCRETE COMPANY, INC.	7	\$296,150
BEDENBAUGH SEED COMPANY, INC.	60	\$1,269,154
BELLINCCO, INC.	1	\$6,094
BLUE RIDGE STRUCTURE COMPANY	2	\$443,760
BOOKMAN TRUCKING COMPANY, INC.	3	\$183,850
BOWMAN CONSTRUCTION COMPANY	3	\$20,066
BOX T ENTERPRISES	9	\$150,496
BUFFINGTON & SMITH CONTRACTORS	13	\$3,961,663
B & M TRUCKING, INC.	1	\$5,622
CALDWELL TRUCKING	2	\$260,000
CALVIN'S IRON WORKS	9	\$122,351
CAROLINA STALITE COMPANY	1	\$430,800
CHARLES E. BLACK	3	\$467,950
COCHRAN SALES & CONTRACTING COMPANY	1	\$36,000
CONBAR, INC.	1	\$2,325
COOLEY & SONS HOUSE MOVING	2	\$27,059
COVAN'S DEMOLITION	1	\$13,000
CURTIS TRUCKING COMPANY	15	\$1,340,929
C.C. TRUCKING	8	\$248,735
DOBBS CONSTRUCTION COMPANY	16	\$1,872,226
DYE & SON TRUCKING	2	\$58,700
D & D SPECIALITIES	2	\$3,698
EASTERN TURF SERVICE	2	\$71,790
ECONO ELECTRICAL CONTRACTORS, INC.	4	\$401,873

Appendix C
Summary of DBE/WBE Goal Contracts Awarded

DBE/WBE SUBCONTRACTOR	NUMBER OF PROJECTS	AMOUNT COMMITTED
ERNEST M. GORDON & SON TRUCKING	1	\$223,897
FRANK SMOOT MASONRY	1	\$51,000
GEORGE BOYLES CONSTRUCTION	2	\$138,982
GILCHRIST CONSTRUCTION COMPANY, INC.	8	\$615,760
HENRY SHELLMAN LANDSCAPE/CONSTRUCTION	1	\$7,000
HIGHWAY VALETS, INC.	6	\$440,890
HILL MILLING, INC.	6	\$414,380
HOMER MOSS TRUCKING	5	\$431,000
H.R. GARRETT, INC.	26	\$1,423,107
H.W. BOYLES CONSTRUCTION COMPANY, INC.	4	\$460,223
CDW ENTERPRISES, INC.	2	\$9,040,000
JACKSON TRUCKING COMPANY	10	\$722,338
J & A MURPH TRUCKING	2	\$69,550
J & R TRUCKING	5	\$643,820
J.P. JONES	4	\$292,468
LEN HAZEN PAINTERS, INC.	5	\$441,247
LEON'S FENCE & HOME IMPROVEMENTS	4	\$62,292
LIBERTY STEEL ERECTORS, INC.	1	\$10,533,087
LINEBERRY, INC.	1	\$57,300
LO JAC, INC.	1	\$302,763
LOCKLEAR'S BROTHERS STEEL ERECTORS	19	\$1,025,862
L. S. TRUCKING	3	\$97,125
L.A. BARRIER & SON, INC.	6	\$1,388,998
MARTIN LANDSCAPING COMPANY, INC.	7	\$1,046,070
MBE, INC.	1	\$17,940
MONT'S TRUCKING	7	\$129,555
MURRAY SAND COMPANY	5	\$215,664
M & M CONSTRUCTION COMPANY	1	\$56,195
MCMHAND PAVING COMPANY	1	\$46,887
NATIVE CONSTRUCTION	1	\$553,150
OGLESBY CONSTRUCTION, INC.	10	\$603,037
OLIVER LANDSCAPING	5	\$76,779

Appendix C
Summary of DBE/WBE Goal Contracts Awarded

DBE/WBE SUBCONTRACTOR	NUMBER OF PROJECTS	AMOUNT COMMITTED
ORDERS CONSTRUCTION COMPANY	1	\$10,360
OTHERDAY, INC.	36	\$1,861,708
OUTEN FENCING, INC.	1	\$53,294
PALMETTO HAULING	19	\$1,766,540
PERFORMANCE STEEL ERECTORS	14	\$2,499,376
PINCKNEY CONSTRUCTION	4	\$316,700
THE POLOTE CORPORATION	2	\$3,520,237
QUILLER EXCAVATION	5	\$452,205
RAY'S PAVEMENT MARKING	8	\$362,857
REYNOLDS FENCE AND GUARDRAIL	29	\$4,838,632
RICK'S TRUCKING & PAVING COMPANY INC.	2	\$74,084
ROBERT'S ENTERPRISES, INC	2	\$58,700
ROBINSON & SON TRUCKING	14	\$1,755,415
SANDLAPPER CONTRACTORS, MYRTLE BEACH	1	\$72,274
SANITARY PLUMBING CONTRACTORS, INC.	41	\$4,923,954
SCIPIO'S BACKHOE SERVICE	15	\$2,110,623
SHA TRUCKING COMPANY, INC.	8	\$251,318
F. B. SHUMPERT LUMBER CO.	2	\$10,950
SOUTHERN OIL & FUEL, INC.	1	\$50,000
STATE CONTRACTING CORPORATION	12	\$3,297,390
SWING CONSTRUCTION COMPANY INC.	1	\$41,000
S & S CONSTRUCTION, INC.	23	\$3,637,069
TAYLOR BROTHERS CONSTRUCTION COMPANY	13	\$2,353,830
TAYLOR GUARDRAIL & PAVEMENT MARKING	95	\$6,653,199
TRI-STATE TRAFFIC SAFETY	9	\$264,820
WASHINGTON'S TRUCKING	12	\$889,722
WEEKS PAINTING & CONSTRUCTION COMPANY	1	\$17,730
WILLIAMS & MOSLEY CONSTRUCTION COMPANY INC.	4	\$698,534
W.T & SONS CONSTRUCTION COMPANY, INC.	11	\$1,358,267
TOTAL FY 86-87 THROUGH FY 89-90		\$90,969,377

Note: Goal contracts awarded are the committed amounts on original contract documents. These amounts do not indicate actual payments received.
Source: SCDHPT construction records, unaudited.

Summary of State Set-Aside Contracts Awarded FY 86-87 Through FY 89-90

Minority Contractor	Type	FY 86-87		FY 87-88		FY 88-89		FY 89-90		Four-Year Totals		
		# of Awards	Amount	# of Awards	Amount	# of Awards	Amount	# of Awards	Amount	# of Awards	Amount	%
H.R. Garrett, Inc.	WBE	7	\$1,783,825	7	\$1,295,653	2	\$324,524	1	\$187,993	17	\$3,591,995	30.51
Sanitary Plumbing Contractors, Inc.	WBE	4	\$610,492	2	\$308,949	3	\$881,350	1	\$185,776	10	\$1,986,567	16.87
T.S. Smalls	DBE	6	\$1,129,849	1	\$139,356					7	\$1,269,205	10.78
S&S Construction, Inc.	WBE	2	\$354,276	4	\$606,365	1	\$224,420			7	\$1,185,061	10.07
Quiller Excavation	DBE			2	\$307,783	3	\$493,728	1	\$134,674	6	\$936,185	7.95
Scipio's Backhoe Service	DBE			2	\$372,698			2	\$434,745	4	\$807,443	6.86
Bailey-Brazell Construction Company, Inc.	WBE	2	\$377,674					1	\$149,199	3	\$526,873	4.48
Taylor Guardrail & Pavement Marking	DBE/WBE	3	\$123,931	1	\$217,766	1	\$22,986	1	\$154,557	6	\$519,240	4.41
BellincCo, Inc.	DBE	1	\$334,020							1	\$334,020	2.84
Lineberry, Inc.	WBE					1	\$180,731			1	\$180,731	1.54
A.V.A Construction Corporation	WBE							1	\$160,077	1	\$160,077	1.35
Green Construction Co.	DBE	1	\$121,975							1	\$121,975	1.04
Reynolds Fence and Guardrail	WBE	2	\$109,519			1	\$43,500			3	\$153,019	1.30
Total		28	\$4,945,561	19	\$3,248,570	12	\$2,171,239	8	\$1,407,021	67	\$11,772,391	100

Note: Amounts shown are funds committed to the contractor. These amounts do indicate actual payments received by DBE contractors.

Source: SCDHPT construction records, unaudited.

SCDHPT Revenues and Expenditures FY 86-87 Through FY 89-90

	FY 86-87	FY 87-88	FY 88-89	FY 89-90
Revenues				
Motor Fuel Taxes	\$244,618,777	\$287,924,025	\$309,974,514	\$331,624,971
License Fees	\$79,757,441	\$75,896,506	\$81,766,124	\$87,857,512
Miscellaneous	\$11,052,857	\$12,709,179	\$18,306,851	\$19,736,865
Grants-in-Aid				
Federal	\$134,688,512	\$188,583,186	\$190,900,447	\$154,000,390
County and Municipal	\$444,494	\$960,634	\$159,142	\$35,564
Other	\$352,717	\$485,963	\$297,812	\$343,029
Total Revenues	\$470,914,798	\$566,559,493	\$601,404,890	\$593,598,331
Expenditures				
Personal Service	\$110,173,205	\$120,711,652	\$133,183,674	\$142,369,332
Other Operating Expenses	\$109,666,309	\$147,354,722	\$175,132,857	\$175,203,787
Permanent Improvements ^a	\$206,205,956	\$280,916,074	\$253,781,446	\$216,801,290
Debt Service	\$8,985,206	\$17,689,982	\$110,189	
Employee Benefits	\$24,847,341	\$25,762,035	\$26,790,029	\$27,677,908
Nonrecurring				\$2,726
Total Expenditures	\$459,878,017	\$592,434,465	\$588,998,195	\$562,055,043
Excess (Deficiency) of Revenues Over Expenditures	\$11,036,781	(\$25,874,972)	\$12,406,695	\$31,543,287

^a Permanent Improvements breakdown can be found in Appendix F.

Source: SC Budget and Control Board documents.

Detail of Permanent Improvements FY 86-87 Through FY 89-90

	FY 86-87	FY 87-88	FY 88-89	FY 89-90
Administrative				
Land	\$706,565	\$637,909	\$62,250	\$46,000
Construction Buildings and Additions	\$6,742,643	\$3,818,487	\$4,326,239	\$3,490,103
Right of Way and Acquisitions	\$159,159			
Highway and Road Improvements	\$135,683			\$2,069
Highway Engineering				
Land			\$6,600	
Construction Buildings and Additions		\$83,723		
Right of Way and Acquisitions		\$14,478,521	\$11,897,163	\$17,711,073
Highway and Road Improvements		\$261,892,819	\$231,466,166	\$180,645,911
Highway Maintenance				
Site Development				\$6,229
Construction Buildings and Additions		\$115		
Right of Way and Acquisitions			\$3,000	\$100,000
Highway and Road Improvements	316,021	\$4,500	\$63,090	\$366,445
Strategic Highway Program				
Right of Way and Acquisitions	\$18,936,848		\$1,230,690	\$2,223,952
Highway and Road Improvements	\$179,209,037		\$4,726,248	\$10,701,148
State Economic Development				
Right of Way and Acquisitions				\$82,325
Highway and Road Improvements				\$1,426,035
Totals	\$206,205,956	\$280,916,074	\$253,781,446	\$216,801,290

Source: SC Budget and Control Board documents.

Agency Comments



SOUTH CAROLINA
DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
P.O. BOX 191
COLUMBIA, S.C. 29202

May 16, 1991

Mr. George L. Schroeder
Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear George:

Please find attached a copy of our response to the Legislative Audit Council's report on the audit of the South Carolina Department of Highways and Public Transportation. The Department appreciates LAC's thorough audit and their constructive recommendations. Again, some of the findings have been previously identified by the Department and were being addressed prior to the audit.

The Department will certainly benefit from the audit findings by improving the minority and women contractor's program.

Sincerely,

Robert N. McLellan
Executive Director

South Carolina Department of Highways and Public Transportation

Introduction

The process of developing the DBE/WBE Program in accordance with law has been challenging. The State/Federal requirements are extensive, and it has taken the Department several years to develop the procedures necessary to implement the program.

The Department's DBE/WBE program has improved tremendously from its inception almost a decade ago. However, we realize there are a number of problems to be addressed.

We agree that coordination of the program and reporting systems need improvement. We are striving to make these improvements.

It must be recognized that the Department is in the business of building and maintaining roads. We are not staffed for, nor do we have skills for running a full scale minority business development program, although we have provided extensive training in cooperation with S. C. State College to enhance the management skills of the DBE/WBE contractors.

The Department wants to see these participating firms continue to progress and develop and to make a real contribution to the Highway and Building construction industries of our State.

The Department agrees with the majority of LAC's recommendations and is committed to developing procedures and policies to ensure their implementation.

Although State and Federal laws only require that 10 percent of certain highway funds be expended with DBE/WBE's, the Department has committed more than 10 percent in every year covered by the LAC audit. Ensuring that these funds actually get paid to the DBE/WBE's is the next challenge. This will require not only the Department's efforts, but also the cooperation of the prime contractors and the DBE/WBE's.

We would point out that the new State set-aside law provides for direct contracts between the Department and the DBE/WBE firms. This benefits the DBE/WBE's by eliminating the problems of payment to subcontractors which arise under a goals program. It is true that fewer DBE/WBE firms are currently participating in the set-aside program than were participating in the goals program. This is because there are fewer DBE/WBE firms who can qualify under the Department's prequalification standards for prime contracts. However, even though fewer DBE/WBE's are participating in the set-aside program, the potential for benefit to those firms appears to be greater than under the goals program.

Subcontractor Payments

The LAC is correct in that the Department has not developed procedures to monitor payments from contractors to subcontractors and material suppliers. This is because the Department's contract is with the prime contractor, and our policy has been to not interfere with relationships between prime and subcontractors. All contracts on which DBE goals are included must be covered by performance and payment bonds. Payment bonds are required by the Department so that subcontractors will have a source for payment if payment by the prime is not made. A DBE subcontractor can obtain payment from the bonding company if a proper claim is made. It should be noted that the Department is required to withhold retainage on each contract until completed, and the prime contractor often makes an equal withholding as to subcontractors in proportion to the work they have performed.

The Department does not monitor the timeliness of DBE/WBE subcontractor payments for the same reason stated above. The Department does not intervene in the contract between the prime and subcontractor. The prompt payment law (Section 29-6-30), as LAC has recognized, does provide protection to subcontractors as well as contractors for timely payment. However, the law does not require the owner (the Department in highway contracts) to monitor payments to subcontractors. The law requires the owner to pay its contractor (the prime contractor), within twenty-one days, any undisputed amount of a pay request. It is then the prime contractor's responsibility to pay the subcontractor. If a DBE/WBE subcontractor is not paid within seven days, and the subcontractor has advised the prime that his request for payment is made pursuant to Section 29-6-30, the DBE/WBE subcontractor has an action against the prime for the undisputed amount of the payment, plus interest. The law provides no remedy for the subcontractor against the owner, because the subcontractor is not in privity of contract with the owner. The subcontractor is in privity of contract with the prime.

LAC recommends that the Department should ensure that contractors pay their subcontractors and material suppliers in a timely manner as specified in Section 29-6-30 of the South Carolina Code of Laws. The Department agrees with the underlying intent of this recommendation in that it would encourage prime contractors to pay DBE/WBEs promptly for work performed in a satisfactory manner. However, if the DBE/WBE has performed in a satisfactory manner and has made request for payment from the prime under Section 29-6-30, the DBE/WBE would have a contractual and statutory remedy against the prime independently of the Department. LAC's recommendation would have the effect of requiring the Department to pursue and adjudicate the DBE/WBE's legal remedies. The Department respectfully submits that such remedies are for the WBE/DBE subcontractors to pursue in a court of law against the prime contractors with whom they contract.

Replacement and Use of DBE/WBEs

Under the Department's present procedures, the only way to determine whether or not a WBE/DBE has been replaced on a project is by examining the project files in the Director of Construction's Office to see if it contains a letter approving such replacement. The quarterly reports as they are presently set up do not provide this information and are not intended to do so. They are simply a tool for monitoring payments to approved DBE/WBE subcontractors. Department instructions regarding completion of quarterly reports require a listing of DBE/WBEs that have been approved for work on a project. The listing of a DBE/WBE on the committal sheet at the time of the bid does not constitute Department approval of those DBE/WBEs. This may explain why some WBE/DBEs were not shown on quarterly

reports reviewed by LAC even though they appeared on the DBE/WBE committal sheet. The Department feels that replacement is adequately monitored under present procedures through approval letters.

The LAC review disclosed only one case where replacement may have been improper. The Department in fact made a conditional replacement in that case. The replacement was allowed on the representation from the prime contractor and the WBE that the WBE would be used for other work on the project. A non-minority firm was allowed to do some work of the same kind that had been committed to the WBE prior to the Department's approval of the replacement, because not all of that kind of work on the project was committed to the WBE.

Subsequent investigation revealed that the WBE would not be performing a commercially useful function on the replacement work. The Department then notified the prime contractor that in order to fulfill its commitment under the contract, it would have to subcontract additional work to the WBE or obtain a release from the WBE. At the time of this writing, the matter has not been resolved between the prime and the WBE. However, the project is still ongoing and the Department has not released the retainage of approximately 2.5 million dollars. If the prime does not resolve its dispute with the WBE, the Department will take appropriate action.

Another case cited in the LAC review involved the use of a DBE who was decertified in another state at the time the Department approved the DBE for contract work. Pursuant to 49 CFR, Section 23.55(c), during the pendency of an appeal to U. S. Department of Transportation (DOT) on a decertification, the U. S. Secretary of Transportation may deny the DBE the right to participate in DOT-assisted contracts. In the particular case that is noted in the LAC review, the DBE had appealed the decertification to U. S. DOT and the Secretary had not issued such a denial. Therefore, the Department was justified in awarding the contract to the DBE during the pendency of the appeal. The DBE's decertification was not final until the U. S. DOT made a ruling on the appeal.

LAC recommends that the Department should investigate all situations where there is evidence that a contractor has not received Department authorization to replace a DBE/WBE subcontractor. The Department agrees with the recommendation and in fact does investigate all situations where firms who are not approved to perform work on a project are performing. Our Standard Specifications require that any firms other than the prime contractor must be approved by the Department prior to performing work on the project (Section 108.01, Standard Specifications).

LAC further recommends that the Department should assess penalties on contractors whenever its investigation indicates that the replacement of a DBE/WBE subcontractor was not authorized by the Department. Likewise, if the investigation indicates that the DBE/WBE subcontractor is at fault, punitive action should be taken against the subcontractor. The Department partially agrees. The Department does sanction prime contractors who use unauthorized replacements, if the prime does not meet the contract's DBE goal. Any payments made to an unauthorized DBE/WBE subcontractor will not be counted toward the contract goal. Therefore, the Department feels that it is already assessing the penalties that LAC recommends as to prime contractors.

The LAC also recommends sanctions against DBE subcontractors. As stated above, the Department does not have a direct contract with the subcontractor. For this reason, the Department does not impose penalties or sanctions on DBEs for breach of their subcontract with the prime. It should be noted, however, that the Department controls approval of all

subcontractors on projects. Therefore, the Department has the authority to disapprove a request for a subcontractor to perform work if it is determined that the subcontractor has violated his obligation to perform in good faith on past projects.

Under the new State set-aside legislation, the Department will have direct contracts with DBE/WBE's. The proposed regulations provide for sanctions against DBE/WBE's who do not comply with contract requirements.

The LAC recommends that the Department should routinely verify the status of firms certified in other states upon application for certification as well as during the recertification process in South Carolina. The Department concurs with LAC audit recommendation. A procedure was recently implemented by the Department for the purpose of requesting information on certification status from other states on all out-of-state applicants for certification or recertification.

Hauling Agreements

The LAC report states that the Department's policy toward hauling (trucking) agreements appears to be contrary to the requirements of the Federal Highway Administration. While we do require written contracts for subcontractors, this is not a requirement of the FHWA, as all they require is a certification from a prime contractor that a contract (written) exists and contains all proper Federal documents as a part of the contract. Also, the Department of Labor, as well as FHWA, has made a distinction between the actual hauling (freighting) of materials and other work, as the freighting is not even considered in the requirement that thirty (30) percent of work must be performed by a contractor's own forces.

We have no objection to requiring written agreements between hauling firms and prime contractors; however, we do not feel that haulers (freighters) of materials should be considered as subcontractors.

The LAC recommends that the Department should require written agreements between contractors and all DBE/WBE subcontractors including hauling firms. The LAC further suggests that the General Assembly may wish to amend Section 12-27-1320 of the South Carolina Code of Laws to require written agreements between contractors and subcontractors as a condition of counting applicable highway construction work towards the state DBE/WBE participation requirements. The Department has no objections to requiring written agreements between contractors and hauling firms as a part of the DBE Goals Program.

Material Costs

The Department is in agreement with the findings as to material costs stated in the report as it pertains to furnish and haul only. In other areas of work, such as curb and gutter and sidewalk, materials are an integral part and have to be counted as a portion of the work. We have developed special provisions which will be effective with the June 1991 highway letting that address this situation. The LAC recommends that the Department should amend the special provisions relative to material costs to conform with 49CRF, Section 23.47 (F)(2). The LAC further recommends that the cost of materials purchased from non-DBE/WBE suppliers for "furnish and haul" arrangements should not be counted towards the federal and state DBE/WBE participation. The Department agrees with these recommendations. The Department has attempted to rectify this situation by revising

the Special Provisions to address furnishing of materials. The Special Provisions become effective beginning with the June 1991 highway letting. [See attachment A, Paragraph 6(c)(2)].

The LAC recommends that the Department should modify the DBE/WBE quarterly report form to separately show the cost of materials and delivery charges. The Department concurs and will modify the DBE/WBE quarterly report accordingly, to apply to furnish and haul agreements only.

The LAC recommends that the General Assembly may wish to consider amending Section 12-27-1320 of the South Carolina Code of Laws to disallow materials purchased from non-DBE/WBE suppliers to count as state DBE/WBE participation. If this is done, the law should specify furnish and haul arrangements only.

Recordkeeping

The Department concurs with LAC audit findings, that without accurate records the Department cannot effectively administer and monitor the DBE/WBE Program. Since 1989 the Department has revised the DBE quarterly report form to include a signature line for DBE/DWBE use. Prior to this time other methods were used to verify payments to DBE/DWBE subcontractors, such as signed affidavits by DBE/DWBE subcontractors attesting to the correctness of payment reports and payment verification letters signed by DBE/DWBE subcontractors. The Department continuously puts forth efforts to obtain verification of payment made to DBE/DWBEs by advising contractors in writing of the options that can be used for showing proof of payments to DBE/DWBE subcontractors. (See attachment B.) Our follow-up with DBE/DWBE subcontractors is an integral part of our efforts to obtain verification of payments by contractors. (See attachment C.)

It is not our practice to accept quarterly reports which are signed only by prime contractors to verify payments to DBE/DWBE subcontractor. It may not have been understood that completion dates of highway construction projects have varying lengths. It is not unusual for a job to be active for a two-year period without our receiving a DBE report. The most common reason for this is that the work to be performed by DBE/DWBE subcontractors may occur at the latter part of the job. The Office of Compliance recommends that the project file not be closed out until payments to DBE/DWBE subcontractors have been properly verified. In cases where the total contract amount changes after the award of a contract, the amount committed for DBE/DWBE participation is unaffected unless the changes involve the DBE/DWBE's work items. Determinations of compliance are made based on commitment amounts which may or may not be the same as the project goal as originally intended. We plan to evaluate each project as far as the overall attainment is concerned and measure such attainment by determining the percentage paid to DBE/DWBEs based on the total amount paid out on the project.

The 1987 State DBE/WBE Law (Act 197 of 1987) did not specifically address building construction contracts, since the building construction contracts are let under the State Procurement Code. The Department operated under the policy of accepting firms certified by the Governor's Office. However, this practice lead to confusion over the verification of payments and the monitoring requirements. Compliance began monitoring DBE/DWBE involvement and has made efforts to verify payments to DBE/DWBE subcontractors on building construction projects since the process was clarified. (See Attachment C)

The LAC recommends that the Department should develop an internal reporting system to enable management to review the status of DBE/WBE goal participation. The Department concurs with the intent of this recommendation and is in the process of writing computer programs which will satisfy this item. (See attachment D)

The LAC recommends that the Department should implement procedures to ensure that quarterly DBE/WBE reports are received in a timely manner. The Department concurs with intent of this recommendation but would submit that the Department has implemented such procedures as shown in Attachment A, Paragraph 7 and Attachment C.

The LAC recommends that the Department should implement procedures to follow-up on quarterly DBE/WBE reports which are incomplete and/or inaccurate. The Department concurs with intent of this recommendation and projects a timetable for implementing within a year.

Certification Process

The Department concurs with the audit findings.

The LAC recommends that the Office of Compliance should consider developing a reciprocity agreement with other states to ensure that information on the certification of firms in other states is transmitted to the Office of Compliance in a timely manner. The Department concurs with the intent of this recommendation. The Department has already developed a process to exchange information with other states. The Office of Compliance will continue to develop procedures to ensure communication with other states when considering applications from out-of-state firms.

Uncertified Firms

The State DBE/WBE law passed in 1987 (Act No. 197 of 1987, effective July 1, 1987, and codified as Section 12-27-1320) required SCDHPT to insure that not less than 10% of total state source highway funds expended on construction contracts be expended with DBE's and WBE's (emphasis added). The 1987 law did not specifically address building construction contracts. Since building construction contracts are let under the State Procurement Code, there was some confusion as to whether the 10% goal of the DBE/WBE law applied to such contracts. There was also a question as to whether DBE/WBE subcontractors on building construction contracts were to be certified by SCDHPT pursuant to Section 12-27-1320 or by the Governor's Office pursuant to the Procurement Code (Section 11-35-5270). Since the Governor's Office was already certifying DBE/WBE firms for procurement purposes, SCDHPT began a policy of accepting these firms for projects let under the procurement process.

In the 1990 amendment to the State DBE/WBE law (Act No. 612 of 1990, Part II, Section 28B), building construction contracts were specifically made a part of the program. The law was changed to apply to "state source highway funds expended on highway, bridge, and building construction and building renovation contracts" (emphasis added). Since the change in the law, SCDHPT's Office of Compliance has begun certifying building contractors in the same way it has certified road contractors in the past.

The LAC is correct in stating that the Department used DBE/WBE firms that were not Department certified. However, there were extenuating circumstances.

Four of the seven firms cited as being not Department certified were certified by the Governor's Office. As stated earlier, this became Department policy because of the special nature of Building Construction Contracts.

Three of the firms cited as being not Department certified were used on the very first project let under this program. The certified list was still being compiled and there were simply not enough DBE/WBE building subcontractors to meet the goal. (See attachments E and F)

Presently, the Building Engineer's Office is making every effort to keep lines of communication open to the Office of Compliance and to comply with all laws regarding DBE/WBE projects.

LAC recommends that the Department should comply with Section 12-27-1320(a) of the South Carolina Code of Laws which provides that only certified firms are to be accepted for DBE/WBE participation on designated set-aside or goals building construction projects. The Department concurs with this LAC audit recommendation. Effective July 1, 1990, under the new DBE legislation Section 12-27-1320(a), the Building Engineer's Office began implementing the new requirement that only DBE/WBE firms certified by the Department are accepted to participate on designated set-aside building construction projects.

Program Coordination

The SCDHPT concurs with the LAC Audit findings that coordination through various departments is essential to the effectiveness and success of the Disadvantaged Business Enterprise Program. (D/WBE).

A historical review of legislation governing the Minority Business Enterprise Program since 1982 will reflect several major amendments to the U. S. Department of Transportation's Surface Transportation Assistance Act, Section 105(f) of 1982. Also, the State Legislature has amended the State DBE law, Section 12-27-1320, three times since 1987 to change the program requirements. Because of the amendments to this landmark legislation from 1982 through 1990, the complexity of administering, monitoring and enforcing the program has substantially increased.

Since 1987, the Department has implemented several informal measures to improve the communication and coordination between the offices that are responsible for DBE/WBE program operation. These are as follows:

- Establishment of the position of Executive Assistant for Minority Affairs in 1987.
- Development and revision of a number of special contract provisions designed to strengthen the monitoring and enforcement of the DWBE program.
- Establishment of an informal committee comprised of D/WBE representatives, prime contractor representatives and Department representatives that reviews on a monthly basis highway lettings and discusses DBE related problems that have occurred in the program. The Committee's recommendations are forwarded to the Executive Director.
- Conducting quarterly informational meetings for D/WBE firms who are prequalified to participate in the new set-aside program.

- Conducting monthly meetings with representatives from the Office of Compliance, Office of Construction, Executive Assistant for Minority Affairs, and the Pre-Construction Office to review and identify suitable projects for the set-aside program.
- Conducting monthly meetings with representatives from the Office of Construction, Office of Compliance, and Office of Contract Administration to review goals on projects which have been let and verify that prime contractors have met the project goals.
- Establishment of a Minority Affairs Committee of the Highway Commission to review policy issues which impact minorities and women programs.

Therefore, it is clear that SCDHPT has made more than a good faith effort at communication. It has made a sincere commitment to communicate and coordinate between the various offices in the effort to improve the opportunities and participation of D/WBE firms.

Program Coordination (Promulgate Regulations)

The LAC is correct in stating that SCDHPT did not promulgate regulations for the state-funded DBE/WBE goals program implemented from FY 86-87 to FY 89-90. This is largely due to the fact that the state program was based upon the federal DBE/WBE program. The regulations for the federal program are set forth in the Code of Federal Regulations in Title 49, Part 23. It was initially believed that these regulations would be sufficient to govern the state program.

SCDHPT's certification process has strictly followed the guidelines and requirements set forth in the federal regulations. SCDHPT was pleased that the LAC Review recognized the excellent record SCDHPT has had with certification matters at the U.S. DOT. Insofar as the federal regulations address the workings of a minority business program, SCDHPT has made every effort to comply with the regulations.

However, SCDHPT now recognizes that the federal regulations do not provide sufficient guidance for the workings of the state minority business program. Therefore, beginning in July 1990, SCDHPT began work on promulgating regulations for use in the DBE program. By the Legislative mandate of Section 12-27-1320(0), SCDHPT was required to tailor these regulations to a set-aside program, rather than a goals program. Attached to this response as Attachment G are the regulations that SCDHPT has drafted to meet the requirements of the new set-aside law. Due to the complicated nature of these regulations and the necessity for input from numerous divisions within SCDHPT and the public, the final draft of the regulations will not be ready for submission to the Legislature in the 1991 session. However, SCDHPT fully expects to have the final draft to the Legislature for the 1992 session. Therefore, if the Legislature, after consideration of the points raised in the LAC Review, decides to amend the set-aside program to include goals, a portion of the proposed regulations would need to be amended.

LAC recommends that the SCDHPT should develop written policies and procedures which specify the responsibilities of the Office of Compliance and the Office of Construction concerning the DBE/WBE Program. SCDHPT fully concurs with LAC audit recommendation. SCDHPT will develop these policies and procedures by December 31, 1991.

LAC recommends that the SCDHPT should promulgate regulations for the state DBE/WBE program as required by Section 12-27-1320 of the South Carolina Code of Laws and the Administrative Procedures Act. The SCDHPT concurs and will submit regulations for approval of the General Assembly in its 1992 session.

Complaint Handling

LAC recommends that the Office of Compliance should develop formal procedures to follow when complaints are filed. These procedures should include the maintenance of a standard complaint form, log, and complaint files. These records should include; complainant, nature of complaint, date of complaint, action taken, and follow-up. The Office of Compliance concurs and projects a timetable for implementing prior to one year.

LAC recommends that the staff of the Office of Compliance should be assigned to investigate complaints concerning the DBE/WBE program. In investigating complaints, compliance staff should, as necessary, confer with other appropriate department staff. The Department concurs with the intent of this recommendation; however, we will need to identify additional personnel/resources in order to fully implement this item.

Issue for Further Study

The LAC audit preliminary analysis of the State set-aside program was based on data from FY 86-87 through FY 89-90. This is prior to the current set-aside law that became effective July 1, 1990. The previous set-aside law was a combination of goals and set-asides. During this period, the emphasis was on the goals aspect of the program and the set-asides were only used to maintain the required ten percent or the percentage balance between the DBE and DWBE (5% each).

Effective July 1, 1990, the new State set-aside legislation (12-27-1320) completely changed the State set-aside program and also built in a number of safeguards to ensure participation and equal opportunity for the DBE and DWBE firms.

A summary of the State set-aside program data from July 1, 1990, through April 1991 reflects the following results:

The Department has approximately twenty-three (23) firms prequalified to participate as prime contractors in the State set-aside program. Of the twenty-three firms eligible to participate, thirteen firms have been awarded thirty projects for a total of \$4,098,843 or 15.7% of State funds spent on highway construction.

Of the thirteen successful bidders, eight were DBE's with fifteen projects for \$1,875,900 or 7.2% and five were DWBE with fifteen projects for \$2,222,943 or 8.5%. (See Attachment H)

Based on the data results since July 1, 1990, the new set-aside law appears to offer the DBE/DWBE firms a much greater opportunity for growth and development than the previous set-aside law.

LAC recommends that the General Assembly may wish to review the potential effects of changing the emphasis of the minority program from participation goals on individual programs to direct contracts (set-aside). SCDHPT concurs with the LAC audit recommendation intent; however, the emphasis should remain on direct contracting,

because this would be in the best interest of the DBE/DWBE firms. The General Assembly might consider including goals on State projects in excess of a certain dollar cost to further enhance participation by DBE/DWBE subcontractors.



Legislative Audit Council

400 Gervais Street
Columbia, SC 29201
(803)253-7612
(803)253-7639 FAX

Director

George L. Schroeder

Professional Staff

Priscilla T. Anderson

Marcia S. Ashford

Thomas J. Bardin Jr.

Lyndon P. Chappell, CPA

Robert Chatman

Randy Cherry

Marilyn J. Edelhoch, Ph.D.

Sparty B. Hammett III

Jane McCue Johnson, J.D.

Elisabeth S. Lewis

Bethany Allen Narboni

Cheryl A. Ridings

Sara Schechter-Schoeman, J.D.

Perry K. Simpson

Kathleen C. Snider

Jane I. Thesing

Andrew M. Young

Administrative Staff

Susan S. Long

Candice H. Pou

Maribeth Rollings Werts